

IN RE:) In Proceedings
) Under Chapter 12
LARRY E. STRANGE and)
SUSAN STRANGE,) No. BK 87-30185
)
Debtor(s),)

On August 16, 1990, Xenia Elevator, Inc., ("movant") filed an Application for Payment of Administrative Expenses, seeking to recover \$23,854.41 for expenses advanced on behalf of debtors for the planting of their 1988 and 1989 crops. The relevant facts are not in dispute.

Debtors filed a bankruptcy petition under Chapter 12 on March 3, 1987. An order confirming debtors' second amended plan of reorganization was entered on March 21, 1988. Subsequently, on May 17, 1988, debtors filed an Application for Approval of Secured Agricultural Loan Collateral, requesting authority to borrow \$15,000.00 from movant in order to plant and fertilize their 1988 crop, and further requesting authority to grant movant a security interest in their 1988 crops. Debtors then filed a Motion to Withdraw Application for Approval of Secured Agricultural Loan on the basis that debtors were vested with property of the estate upon confirmation of the plan and were thus free to grant a security interest in the ordinary course of business. An Order allowing debtors' motion to withdraw was entered June 21, 1988. Debtors then obtained from movant various chemicals, herbicides, fertilizer and other products in order to fertilize and till both their 1988 crop and 1989 crop. According to movant's Application for Payment of Administrative Expense, the current outstanding balance owed to

movant as of July 31, 1990 is \$23,854.41.

Section 503(b) of the Bankruptcy Code provides:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including --

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case....

11 U.S.C. §503(b)(1)(A). Thus, in order to qualify as an administrative expense, movant must establish, at a minimum, that the expense was incurred to preserve or benefit the estate. In a Chapter 12 case, however, the confirmation of a plan vests all of the property of the estate in the debtor. 11 U.S.C. §1227(b). As explained in a recent case involving the same issue:

If a debtor orders services and goods outside and after the confirmation of a Chapter 12 plan, the fate of the postconfirmation creditor is not determined either by the confirmed plan or by [the bankruptcy court]Plan confirmation binds a debtor and its creditors, and subject to terms of the plan, reverts estate property in the debtor. This allows the debtor to use reverted property, to the extent it is not encumbered by the plan or order of confirmation, to secure post-confirmation credit. A confirmed plan also frees a debtor, subject to the plan or order of confirmation, to operate its business as it deems appropriate. Post-confirmation contracts are enforceable like any other contract, and unless the plan provides otherwise, they are enforceable outside the jurisdiction of the Bankruptcy Court.

In re Muzzey, 1990 Bankr. Lexis 1529 (Bankr. D.Vt. May 14, 1990) (citations omitted).

The Court agrees with the reasoning set forth in the Muzzey decision. In the present case, the parties concede that the debt owed by debtors to movant was incurred post petition and after confirmation

of the plan. As such, movant is free to pursue available state court remedies.

Accordingly, the Application for Payment of Administrative Expense is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: September 28, 1990